

# State of South Dakota

EIGHTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2009

516Q0018

## HOUSE BILL NO. 1295

Introduced by: Representatives Killer, Blake, Burg, Dennert, Elliott, Engels, Fargen, Feickert, Frerichs, Gibson, Greenfield, Hunhoff (Bernie), Iron Cloud III, Juhnke, Kirschman, Lange, Nygaard, Schrempp, Solberg, Sorenson, Street, and Vanderlinde and Senators Bradford, Ahlers, Heidepriem, Hundstad, Maher, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to authorize the establishment of charter schools.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Any applicant seeking to establish a public charter school shall submit a written  
4 application to a proposed sponsor as prescribed in section 3 of this Act. The application shall  
5 include a detailed business plan for the charter school and may include a mission statement for  
6 the charter school, a description of the charter school's organizational structure and the  
7 governing body, a financial plan for the first three years of operation of the charter school, a  
8 description of the charter school's hiring policy, the name of the charter school's applicants and  
9 requested sponsor, a description of the charter school's facility and the location of the school,  
10 a description of the grades being served, and an outline of criteria designed to measure the  
11 effectiveness of the school.

12 Section 2. The sponsor of a public charter school may contract with a public body, private  
13 person, or private organization for the purpose of establishing a charter school pursuant to this



1 Act.

2 Section 3. The sponsor of a charter school may be either a school district governing board  
3 or the State Board of Education, subject to the following requirements:

4 (1) For charter schools that submit an application for sponsorship to a school district  
5 governing board:

6 (a) An applicant for a charter school may submit its application to a school district  
7 governing board, which shall either accept or reject sponsorship of the charter  
8 school within ninety days. An applicant may submit a revised application for  
9 reconsideration by the governing board. If the governing board rejects the  
10 application, the governing board shall notify the applicant in writing of the  
11 reasons for the rejection. The applicant may request, and the governing board  
12 shall provide, technical assistance to improve the application;

13 (b) In the first year that a school district is determined to be out of compliance  
14 with the uniform system of financial records, within fifteen days of the  
15 determination of noncompliance, the school district shall notify by certified  
16 mail each charter school sponsored by the school district that the school  
17 district is out of compliance with the uniform system of financial records. The  
18 notification shall include a statement that if the school district is determined  
19 to be out of compliance for a second consecutive year, the charter school will  
20 be required to transfer sponsorship to another entity pursuant to subsection (c);

21 (c) In the second consecutive year that a school district is determined to be out of  
22 compliance with the uniform system of financial records, within fifteen days  
23 of the determination of noncompliance, the school district shall notify by  
24 certified mail each charter school sponsored by the school district that the

1 school district is out of compliance with the uniform system of financial  
2 records. A charter school that receives a notification of school district  
3 noncompliance pursuant to this subdivision shall file a written sponsorship  
4 transfer application within forty-five days with the State Board of Education  
5 or the school district governing board if the charter school is located within the  
6 geographic boundaries of that school district. A charter school that receives a  
7 notification of school district noncompliance may request an extension of time  
8 to file a sponsorship transfer application and the State Board of Education or  
9 a school district governing board may grant an extension of not more than an  
10 additional thirty days if good cause exists for the extension. The State Board  
11 of Education shall approve any sponsorship transfer application pursuant to  
12 this subsection;

13 (d) No school district governing board may grant a charter to a charter school that  
14 is located outside the geographic boundaries of that school district; and

15 (e) No school district that has been determined to be out of compliance with the  
16 uniform system of financial records during either of the previous two fiscal  
17 years may sponsor a new or transferring charter school;

18 (2) The applicant may submit the application to the State Board of Education. The State  
19 Board of Education may approve the application if the application meets the  
20 requirements of this Act and may approve the charter if the proposed sponsor  
21 determines, within its sole discretion, that the applicant is sufficiently qualified to  
22 operate a charter school. The State Board of Education may approve any charter  
23 schools transferring charters. The State Board of Education shall approve any charter  
24 schools transferring charters from a school district that is determined to be out of

1 compliance with the uniform system of financial records, but may require the charter  
2 school to sign a new charter that is equivalent to the charter awarded by the former  
3 sponsor. If the State Board of Education rejects the preliminary application, the board  
4 shall notify the applicant in writing of the reasons for the rejection and of suggestions  
5 for improving the application. An applicant may submit a revised application for  
6 reconsideration by the State Board of Education. The applicant may request, and the  
7 State Board of Education shall provide, technical assistance to improve the  
8 application;

9 (3) Each applicant seeking to establish a charter school shall comply with the provisions  
10 of § 13-10-12. The criminal records check shall be completed before the issuance of  
11 a charter;

12 (4) All persons engaged in instructional work directly as a classroom, laboratory, or other  
13 teacher or indirectly as a supervisory teacher, speech therapist, or principal shall  
14 comply with the provisions of § 13-10-12. No charter school may employ a teacher  
15 whose certificate has been revoked. All other personnel shall also comply with the  
16 provisions of § 13-10-12. Before employment, the charter school shall make  
17 documented, good faith efforts to contact previous employers of a person to obtain  
18 information and recommendations that may be relevant to a person's fitness for  
19 employment;

20 (5) The operator of a charter school shall conduct a public meeting at least thirty days  
21 before the charter school operator opens any site for the charter school. The charter  
22 school operator shall post notices of the public meeting in at least three different  
23 locations that are within three hundred feet of the proposed charter school site.

24 Section 4. The charter of a charter school shall provide for the following:

- 1       (1)    Compliance with federal, state, and local rules, regulations, and statutes relating to  
2            health, safety, civil rights, and insurance. The Department of Education shall publish  
3            a list of relevant rules, regulations, and statutes to notify charter schools of their  
4            responsibilities under this subdivision;
- 5       (2)    That it is nonsectarian in its programs, admission policies, employment practices, and  
6            all other operations;
- 7       (3)    That it provides a comprehensive program of instruction for at least a kindergarten  
8            program or any grade between grades one and twelve. However, a charter school may  
9            offer this curriculum with an emphasis on a specific learning philosophy or style or  
10           certain subject areas such as mathematics, science, fine arts, performance arts, or  
11           foreign language;
- 12      (4)    That it designs an approved method to measure pupil progress, toward the pupil  
13            outcomes adopted by the State Board of Education;
- 14      (5)    That, except as otherwise provided in this Act and in its charter, it is exempt from all  
15            statutes and rules relating to schools, governing boards, and school districts;
- 16      (6)    That, except as otherwise provided in this Act, it is subject to the same financial and  
17            electronic data submission requirements as any other school district. The auditor  
18            general shall conduct a comprehensive review and revision of the uniform system of  
19            financial records to ensure that the provisions of the uniform system of financial  
20            records that relate to charter schools are in accordance with commonly accepted  
21            accounting principles used by private business. A school's charter may include  
22            exceptions to the requirements of this subdivision that are necessary as determined  
23            by the school district governing board or the State Board of Education. The  
24            Department of Education or the auditor general may conduct financial, program, or

1 compliance audits;

2 (7) Compliance with all federal and state laws relating to the education of children with  
3 disabilities in the same manner as a school district;

4 (8) That it provides for a governing body for the charter school that is responsible for the  
5 policy decisions of the charter school;

6 (9) That it provides a minimum of one hundred seventy-five instructional days before  
7 June thirtieth of each fiscal year unless it is operating on an alternative calendar  
8 approved by its sponsor. The secretary of education shall adjust the apportionment  
9 schedule accordingly to accommodate a charter school utilizing an alternative  
10 calendar.

11 Section 5. The charter of a charter school shall include a description of the charter school's  
12 personnel policies, personnel qualifications, and method of school governance and the specific  
13 role and duties of the sponsor of the charter school. A charter school shall keep on file the  
14 resumes of all current and former employees who provide instruction to pupils at the charter  
15 school. Resumes shall include an individual's educational and teaching background and  
16 experience in a particular academic content subject area. A charter school shall inform parents  
17 and guardians of the availability of the resume information and shall make the resume  
18 information available for inspection on request of parents and guardians of pupils enrolled at  
19 the charter school. Nothing in this section requires any charter school to release personally  
20 identifiable information in relation to any teacher or employee including the teacher's or  
21 employee's address, salary, social security number, or telephone number.

22 Section 6. The charter of a charter school may be amended at the request of the governing  
23 body of the charter school and on the approval of the sponsor.

24 Section 7. Any charter school may contract, sue, and be sued.

1       Section 8. An approved plan to establish a charter school is effective for five years from the  
2       first day of operation. At the conclusion of the first four years of operation, the charter school  
3       may apply for renewal. In addition to any other requirements, the application for renewal shall  
4       include a detailed business plan for the charter school. The sponsor may deny the request for  
5       renewal if, in its judgment, the charter school has failed to complete the obligations of the  
6       contract or has failed to comply with this Act. A sponsor shall give written notice of its intent  
7       not to renew the charter school's request for renewal to the charter school at least nine months  
8       before the expiration of the approved plan. If a charter school's request for renewal is rejected,  
9       the charter school may appeal to the State Board of Education. The board shall consider the  
10      nonrenewal decision in a contested case procedure conducted in accordance with chapter 1-26  
11      and may affirm, modify, or reverse the nonrenewal decision. A sponsor shall review a charter  
12      at two-year intervals and may revoke a charter at any time if the charter school breaches one or  
13      more provisions of its charter. At least ninety days before the effective date of the proposed  
14      revocation, the sponsor shall give written notice to the operator of the charter school of its intent  
15      to revoke the charter. Notice of the sponsor's intent to revoke the charter shall be delivered  
16      personally to the operator of the charter school or sent by certified mail, return receipt requested,  
17      to the address of the charter school. The notice shall incorporate a statement of reasons for the  
18      proposed revocation of the charter. The sponsor shall allow the charter school at least ninety  
19      days to correct the problems associated with the reasons for the proposed revocation of the  
20      charter. The final determination of whether to revoke the charter shall be made at a public  
21      hearing called for such purpose.

22      Section 9. After renewal of the charter at the end of the five-year period described in section  
23      8 of this Act, the charter may be renewed for a successive period of five years if the charter  
24      school and its sponsor deem that the school is in compliance with its own charter and this Act.

Section 10. No charter school that is sponsored by the State Board of Education may be located on the property of a school district unless the district governing board grants this authority.

Section 11. No governing board or school district employee who has control over personnel actions may take unlawful reprisal against another employee of the school district because the employee is directly or indirectly involved in an application to establish a charter school. No governing board or school district employee may take unlawful reprisal against an educational program of the school or the school district because an application to establish a charter school proposes the conversion of all or a portion of the educational program to a charter school. As used in this section, the term, unlawful reprisal, means an action that is taken by a governing board or a school district employee as a direct result of a lawful application to establish a charter school and that is adverse to another employee or an education program and:

(1) With respect to a school district employee, results in one or more of the following:

- (a) Disciplinary or corrective action;
- (b) Detail, transfer, or reassignment;
- (c) Suspension, demotion, or dismissal;
- (d) An unfavorable performance evaluation;
- (e) A reduction in pay, benefits, or awards;
- (f) Elimination of the employee's position without a reduction in force by reason of lack of moneys or work; or
- (g) Other significant changes in duties or responsibilities that are inconsistent with the employee's salary or employment classification; or

(2) With respect to an educational program, results in one or more of the following:

- (a) Suspension or termination of the program;



(b) Transfer or reassignment of the program to a less favorable department;

(c) Relocation of the program to a less favorable site within the school or school district; or

(d) Significant reduction or termination of funding for the program.

Section 12. Charter schools shall secure insurance for liability and property loss. The governing body of a charter school that is sponsored by the State Board of Education may enter into an intergovernmental agreement or otherwise contract to participate in an insurance program offered by a risk retention pool, or the charter school may secure its own insurance coverage. The pool may charge the requesting charter school reasonable fees for any services it performs in connection with the insurance program.

Section 13. No charter school may acquire property by eminent domain.

Section 14. No sponsor, including members, officers, and employees of the sponsor, is personally liable for any act done or action taken in good faith within the scope of its authority.

Section 15. No charter school sponsor or this state is liable for the debts or financial obligations of a charter school or person who operates a charter school.

Section 16. The sponsoring entity of a charter school has oversight and administrative responsibility for the charter schools that it sponsors.

Section 17. Charter schools may pledge, assign, or encumber their assets to be used as collateral for loans or extensions of credit.

Section 18. Charter schools may obtain or qualify for loans, loan guarantees, and grants for purposes of financing the acquisition, lease of, or additions to real property, plant, or equipment. Such expenditures may include land, existing facilities, improvement of grounds, construction of facilities, additions to facilities, remodeling of facilities, or for the purchase or lease of equipment.

1       Section 19. A transfer or a charter to another sponsor, a transfer of a charter school site to  
2 another sponsor, or a transfer of a charter school site to a different charter shall be completed  
3 before the beginning of the fiscal year that the transfer is scheduled to become effective. An  
4 entity that sponsors charter schools may accept a transferring school after the beginning of the  
5 fiscal year if the transfer is approved by the secretary of education. The secretary of education  
6 has the discretion to consider each transfer during the fiscal year on a case by case basis. If a  
7 charter school is sponsored by a school district that is determined to be out of compliance with  
8 state statute, the uniform system of financial records, or any other state or federal law, the  
9 charter school may transfer to another sponsoring entity at any time during the fiscal year.

10       Section 20. A sponsoring entity may charge a charter school that it sponsors an annual fee  
11 not to exceed three percent of the charter school's revenues or thirty-five thousand dollars,  
12 whichever is less. No sponsoring entity may charge any additional fees to a charter school that  
13 it sponsors unless the sponsor has provided services to the charter school and the fees represent  
14 the full value of those services provided by the sponsor. On request, the value of the services  
15 provided by the sponsor to the charter school shall be demonstrated to the Department of  
16 Education.

17       Section 21. A public charter school has a right of first refusal to purchase or lease at or  
18 below fair market value a closed public school facility or property or unused portions of a public  
19 school facility or property located in a school district from which it draws its students if the  
20 school district decides to sell or lease the public school facility or property. The school district  
21 may not require purchase or lease payments that exceed the fair market value of the property.

22       Section 22. A charter school shall enroll all eligible pupils who submit a timely application,  
23 unless the number of applications exceeds the capacity of a program, class, grade level, or  
24 building. A charter school shall give enrollment preference to pupils returning to the charter

1 school in the second or any subsequent year of its operation and to siblings of pupils already  
2 enrolled in the charter school. A charter school that is sponsored by a school district governing  
3 board shall give enrollment preference to eligible pupils who reside within the boundaries of the  
4 school district where the charter school is physically located. If capacity is insufficient to enroll  
5 all pupils who submit a timely application, the charter school shall select pupils through an  
6 equitable selection process.

7 Section 23. A charter school may limit admission to pupils within a given age group or grade  
8 level. However, no charter school may limit admission based on academic potential or  
9 achievement, ethnicity, national origin, religion, gender, sexual orientation, income level,  
10 disabling condition, proficiency in the English language, athletic ability, or special cost  
11 considerations with regard to the education of special needs students.

12 Section 24. A charter school may refuse to admit any pupil who has been expelled from  
13 another educational institution or who is in the process of being expelled from another  
14 educational institution.

15 Section 25. A teacher who is employed by, or teaching at, a charter school and who was  
16 previously employed as a teacher at a school district does not lose any right of certification,  
17 retirement status, salary status, or any other benefit provided by law, by the rules of the  
18 governing board of the school district, or by the rules of the board of directors of the charter  
19 school due to teaching at a charter school on the teacher's return to the school district if the  
20 teacher requested and was granted a leave of absence prior to employment by the charter school.

21 Section 26. A teacher who is employed by, or teaching at, a charter school and who submits  
22 an employment application to the school district where the teacher was employed immediately  
23 before employment by or at a charter school shall be given employment preference by the school  
24 district if all of the following conditions are met:

- 1       (1)    The teacher submits an employment application to the school district no later than
- 2            three years after ceasing employment with the school district; and
- 3       (2)    A suitable position is available at the school district; and
- 4       (3)    The teacher requested and was granted a leave of absence prior to employment by the
- 5            charter school.

6       Section 27. A charter school that is sponsored by a school district governing board or the

7       State Board of Education is eligible to participate in the state retirement system.

8       Section 28. If a pupil who was previously enrolled in a charter school enrolls in a public

9       school in this state, the public school shall accept credits earned by the pupil in courses or

10       instructional programs at the charter school in a uniform and consistent manner and according

11       to the same criteria that are used to accept academic credits from other public schools.

12       Section 29. Although it is the intent of this Act that any charter school organized pursuant

13       to this Act be eligible to apply for and receive federal grant funding, nothing in this Act may be

14       construed to imply the charter school is ineligible for federal, state, or local funding to the same

15       degree and pursuant to the same circumstances as any other public school.

16       Section 30. Any enrolled student as defined in § 13-13-10.4 who attends a public charter

17       school created pursuant to this Act shall, for the purposes of distributing state aid to education,

18       be counted in the fall enrollment of the school district in which the public charter school is

19       located.

20       Section 31. Any charter school organized pursuant to this Act is subject to all public sector

21       labor relations statutes not otherwise inconsistent with the provisions of this Act. All charter

22       school employees have the same collective bargaining rights as other public school employees.

23       Section 32. Any charter school organized pursuant to this Act is subject to the same audit

24       provisions that apply to any other public school.

1       Section 33. Any charter school organized pursuant to this Act shall provide an annual report  
2   to its sponsoring entity and to the Department of Education. In addition, each charter school is  
3   subject to the same reporting requirements that apply to any other public school.

4       Section 34. The chartering provisions of this Act do not apply to any school that is:

- 5       (1)   Organized as a for-profit school; or  
6       (2)   Organized as a private, restricted admission school; or  
7       (3)   Organized to provide alternative instruction pursuant to § 13-27-3.